

**TITLE 326 AIR POLLUTION CONTROL BOARD****FIRST NOTICE OF COMMENT PERIOD**

LSA Document #11-460

**DEVELOPMENT OF NEW RULES CONCERNING THE FEDERAL CROSS-STATE AIR POLLUTION RULE****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on new rules at [326 IAC 24](#) concerning the federal Cross-State Air Pollution Rule (CSAPR or Transport Rule) published by the United States Environmental Protection Agency (U.S. EPA) on August 8, 2011 (76 FR 48208) and the repeal of the Clean Air Interstate Rule (CAIR) at [326 IAC 24-1](#), [326 IAC 24-2](#), and [326 IAC 24-3](#). IDEM is also accepting comment on the repeal of the NO<sub>x</sub> SIP Call trading rules at [326 IAC 10-4](#) as well as comments on [326 IAC 10-3](#) arising from the repeal of CAIR. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [326 IAC 10](#); [326 IAC 24-1](#); [326 IAC 24-2](#); [326 IAC 24-3](#); [326 IAC 24-5](#); [326 IAC 24-6](#); [326 IAC 24-7](#).

**AUTHORITY:** [IC 13-14-8](#); [IC 13-17-3-1](#); [IC 13-17-3-4](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

U.S. EPA finalized CSAPR to reduce the interstate transport of fine particulate matter and ozone on July 6, 2011, with publication in the Federal Register on August 8, 2011. The final rule replaces U.S. EPA's 2005 CAIR that was vacated by a December 2008 court decision that kept CAIR in place temporarily while directing U.S. EPA to issue a replacement rule. CSAPR requires 27 states, including Indiana, in the eastern half of the United States to significantly improve air quality by reducing power plant emissions that cross state lines and contribute to ground-level ozone and fine particle (PM<sub>2.5</sub>) pollution in other states.

CSAPR includes a process for determining each upwind state's responsibility to protect downwind air quality. Each time the National Ambient Air Quality Standard (NAAQS) is changed, U.S. EPA will apply this process and determine if interstate pollution transport contributes to exceedances of the new standard and whether new emission reductions should be required from upwind states. The rule defines what portion of an upwind state's emissions "significantly contribute" to ozone or PM<sub>2.5</sub> pollution in nonattainment or maintenance areas in downwind states. This definition considers the magnitude of a state's contribution, the air quality benefits of reductions, and the cost of controlling pollution from various sources. Once these obligations are determined, the rule requires states to eliminate the portion of their emissions defined as their "significant contribution" by setting a pollution limit (or budget) for each covered state.

The rule allows air quality-assured allowance trading among covered sources, utilizing an allowance market infrastructure based on existing, successful allowance trading programs. CSAPR allows sources to trade emission allowances with other sources within the same program (for example, Transport Rule Ozone Season NO<sub>x</sub> Trading Program) in the same or different states, while firmly constraining any emissions shifting that may occur by requiring a strict emission ceiling (state assurance level) in each state (the budget plus variability limit). It includes assurance provisions that ensure each state will make the emission reductions necessary to meet the "good neighbor" provision of the Clean Air Act.

CSAPR requires significant reductions in sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) emissions that react in the atmosphere to form PM<sub>2.5</sub> and ground-level ozone and are transported long distances. The first phase of compliance begins January 1, 2012, for annual SO<sub>2</sub> and NO<sub>x</sub> reductions and May 1, 2012, for ozone season NO<sub>x</sub> reductions. The second phase of SO<sub>2</sub> reductions begins January 1, 2014. Indiana is designated as a Group 1 state in CSAPR with additional SO<sub>2</sub> reductions in 2014. By 2014, CSAPR and other final state and U.S. EPA actions will reduce power plant SO<sub>2</sub> emissions by 73% and NO<sub>x</sub> emissions by 54% from 2005 levels. Indiana's budgets in CSAPR are as follows:

Indiana Budgets in CSAPR (in tons)

	2012/2013	2012/2013 Variability	2012/2013 State Assurance Level	2014 and Later Years	2014 and Later Years Variability	2014 and Later Years State Assurance Level
NO <sub>x</sub> Annual	109,726	19,751	129,477	108,424	19,516	127,940
NO <sub>x</sub> Ozone Season	46,876	9,844	56,720	46,175	9,697	55,872

SO <sub>2</sub>	285,424	51,376	336,800	161,111	29,000	190,111
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IDEM proposes adoption of the three trading programs under CSAPR (Transport Rule Annual NO<sub>x</sub> Trading Program, Transport Rule Ozone Season NO<sub>x</sub> Trading Program, and Transport Rule Group 1 SO<sub>2</sub> Trading Program) into state rules at [326 IAC 24-5](#), [326 IAC 24-6](#), and [326 IAC 24-7](#). CSAPR does not allow for banking or carryover of CAIR allowances into CSAPR.

The following are issues/topics identified by IDEM:

#### **Timing of State CSAPR Rule**

U.S. EPA adopted a federal implementation plan (FIP) in order to provide a quick transition from CAIR to CSAPR. The FIP will award allowances for the 2012 and 2013 control periods within 90 days after the CSAPR publishes in the Federal Register. IDEM is proposing to develop a state rule and submit it to U.S. EPA for full state implementation plan (SIP) approval. If IDEM can submit a SIP to U.S. EPA by December 1, 2012, there should be sufficient time for U.S. EPA to approve the CSAPR SIP and Indiana will be able to allocate state allowances starting with the 2014 control period. States do have an option of allocating 2013 allowances (for existing sources) by submitting a SIP to U.S. EPA by April 1, 2012. States need to notify U.S. EPA within 70 days after the Federal Register publication if planning to pursue 2013 allocations. If states do not provide notification, U.S. EPA will allocate 2013 allowances within 90 days after publication in the Federal Register. U.S. EPA also plans to clear each source's CAIR account for CAIR 2012 and beyond so that these unusable CAIR allowances are not available in source's account to cause confusion. IDEM is not planning to pursue a SIP submittal for 2013 allocations.

#### **State CSAPR Rule**

Since CSAPR is a replacement for CAIR, IDEM is proposing to repeal the state CAIR rules at [326 IAC 24-1](#), [326 IAC 24-2](#), and [326 IAC 24-3](#). IDEM is also evaluating if the CAIR rules need to sunset (add language to sunset CAIR for control periods 2012 and later) or be repealed prior to January 1, 2012, in a separate rulemaking action. While the Indiana CAIR SIP, though approved, has no force and effect once CAIR is replaced by CSAPR, there may be reasons to remove CAIR from the state rules prior to CSAPR taking effect. If IDEM does decide to remove CAIR before January 1, 2012, IDEM will consider if there is any need to retain CAIR on the books for control periods 2011 and earlier. For example, IDEM may be awarding 2011 CAIR allowances after December 31, 2011.

#### **Non-Electric Generating Units (Non-EGUs)**

U.S. EPA is not allowing non-EGUs to be included in CSAPR. As allowed under the federal CAIR program, Indiana's state CAIR rule for the NO<sub>x</sub> ozone season had expanded the applicability provisions to bring in all non-EGUs that had traded under the NO<sub>x</sub> SIP Call as a group. States that relied on large non-EGUs for emission reductions required by the NO<sub>x</sub> SIP Call will need to identify another way to ensure continued compliance with the NO<sub>x</sub> SIP Call. IDEM will need to work with U.S. EPA and affected sources to identify a new program for large non-EGUs. IDEM will address non-EGUs in a separate rulemaking once U.S. EPA has provided additional guidance for states. Blast furnace gas-fired boilers that were trading units under CAIR will now fall under the applicability for blast furnace gas units in [326 IAC 10-3-1](#) and be subject to the NO<sub>x</sub> emission limits in [326 IAC 10-3-3](#). CSAPR also does not allow an opt-in program as was provided in CAIR.

#### **Allowance Allocations**

States have the option of following the federal rule for awarding allowances or developing a new methodology. The FIP provides for use of historic heat input (no fuel factors) with a restriction that no unit's allocations can exceed that unit's historic emissions. The historic heat input is based on a 5-year baseline (2006-2010) to approximate a unit's normal operating conditions over time. An average of the three highest, non-zero annual heat input values is used as the historic heat input for each unit. The historic emissions baseline is established using the maximum value for eight years of data (2003-2010) for SO<sub>2</sub>, NO<sub>x</sub>, and ozone season NO<sub>x</sub>. New unit allocations (3% new unit set-aside) are allocated in two rounds with the first round being based on the previous year's emissions, if available, and a second round based on the emissions generated during the first year of operation.

States have the option of considering the CAIR NO<sub>x</sub> allowance banks that will remain after 2011 in developing the allocation methodology under CSAPR. Under the CAIR ozone season NO<sub>x</sub> trading program, unused allowances were carried from the preceding NO<sub>x</sub> Budget Trading Program. Under the CAIR Annual NO<sub>x</sub> Trading Program, extra allowances (from the compliance supplement pool (CSP)) were allocated for early reductions. A preliminary search of U.S. EPA's allowance tracking system does indicate that some facilities have pre-2010 ozone season NO<sub>x</sub> allowances that would have been transferred from the NO<sub>x</sub> Budget Trading Program residing in their accounts. These may end up being used by facilities for compliance with the 2011 control period. The preliminary search also indicates that a few facilities that participated in the CAIR CSP early reduction program have 2009 annual NO<sub>x</sub> allowances in their accounts. A more thorough analysis would be needed to look at the serial numbers to see if any of these were awarded through the CSP program. Since there does not seem to be a large number of allowances in either of these situations, a methodology that addresses this issue would unnecessarily complicate an allocation methodology under CSAPR.

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**Energy Efficiency/Renewable Energy Set-Aside**

Under the Indiana CAIR rule, sponsors of energy efficiency or renewable energy (EE/RE) projects could receive NO<sub>x</sub> allowances (ozone season and annual) that could be sold on the market. For example, a wind turbine project, could apply for NO<sub>x</sub> allowances based on the amount of NO<sub>x</sub> emissions reduced due to the displacement of coal, natural gas, or oil usage. CSAPR does allow states to give allowances to renewable energy facilities as part of the option of giving states discretion on how to allocate allowances within the state.

For each control period, project sponsors receive notice from IDEM on the amount of allowances reserved for each project by July 31 of each year. Project sponsors have already received notice of their CAIR 2011 NO<sub>x</sub> allowance reservations for both the annual and ozone season EE/RE set-aside. The current CAIR rules specify that EE/RE allowances are awarded to project sponsors by March 31 of the following year once IDEM receives notice of the actual NO<sub>x</sub> reductions for each project by October 31 for the ozone season program and January 31 for the annual program. IDEM will work with sponsors of EE/RE projects to promptly award 2011 allowances. These 2011 CAIR allowances will have limited value since the CAIR program is being replaced with CSAPR. U.S. EPA has indicated that March 1, 2012, is the approximate date, after all sources in states have completed demonstrating compliance ("true-up") for the CAIR NO<sub>x</sub> ozone season and CAIR NO<sub>x</sub> annual programs, that the CAIR 2011 allowances will no longer be valid and will be removed from each source's CAIR accounts.

IDEM invites comments and suggestions on the adoption of CSAPR into the Indiana Administrative Code (IAC). At this time IDEM has not made any decisions on allowance allocation methods or options to consider within CSAPR and will evaluate comments received from interested parties before moving forward. IDEM is interested in adopting a rule that does not increase the complexity of CSAPR and that is as consistent as possible with the federal rule to allow for incorporation by reference of the federal language.

**Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Adopt federal cap and trade rule and repeal/amend appropriate existing rules. Within this alternative there is the option to adopt the model cap and trade rule, but select a different allowance allocation methodology than provided in the federal model rule.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes.
- If it is a federal requirement, is it different from federal law? No.
- If it is different, describe the differences. Not applicable.

Alternative 2. Do not adopt the federal rule.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

**Applicable Federal Law**

This rulemaking is related to the federal CSAPR rule signed by the U.S. EPA administrator on July 6, 2011, and published in the Federal Register on August 8, 2011.

**Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. Adopting the federal rule will have no additional state fiscal impact since the requirements are already imposed under federal law. U.S. EPA estimates for the affected CSAPR states, that the projected annual costs are \$800 million spent annually in 2014 on CSAPR, along with the roughly \$1.6 billion per year in capital investments already under way as a result of CAIR.

Potential Fiscal Impact of Alternative 2. If this rule is not adopted by the Indiana Air Pollution Control Board then U.S. EPA would retain the FIP that is already in place for Indiana sources. The fiscal impact on affected sources under the FIP or the state rule would be the same.

**Small Business Assistance Information**

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

<http://www.in.gov/idem/4108.htm>

For purposes of [IC 4-22-2-28.1](#), the Small Business Regulatory Coordinator for this rule is:

Alison Beumer

IDEM Compliance and Technical Assistance Program - OPPTA

MC 60-04 IGCS W041

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 232-8172 or (800) 988-7901

ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Ryan Asberry  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 232-8962  
smallbizombudsman@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn  
IDEM Small Business Assistance Program Ombudsman  
MC 50-01 IGCN 1307  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 234-3386  
bbaughn@idem.in.gov

#### **Public Participation and Workgroup Information**

IDEM will schedule a roundtable discussion for IDEM to present an overview of the rule and opportunity for discussion between interested parties and IDEM. The meeting can be used to decide if a workgroup is needed for this rulemaking. IDEM will provide the date and location of the meeting once that information is available. If you wish to be added to an e-mail distribution list for this rulemaking, please contact Susan Bem, Rule and State Implementation Plan Development Section, Office of Air Quality at (317) 233-5697 or (800) 451-6027 (in Indiana) or sbem@idem.in.gov. Please provide your name, phone number, and e-mail address, if applicable, where you can be contacted.

#### **STATUTORY AND REGULATORY REQUIREMENTS**

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

#### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#11-460 (APCB) CSAPR  
Susan Bem Mail Code 61-50  
Rule and SIP Development Section  
Office of Air Quality  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, IN 46204

Hand delivered comments will be accepted by the IDEM receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5967, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rule and State Implementation Plan Development Section at (317) 234-6530.

#### **COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by September 23, 2011.

Additional information regarding this action may be obtained from Susan Bem, Rule and State

Scott Deloney, Chief  
Air Programs Branch  
Office of Air Quality

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